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17 UNITED STATES DISTRICT COURT

18 CENTRAL DISTRICT OF CALIFORNIA

19 WESTERN DIVISION

20  
21 ECLIPSE IP LLC, a Florida Limited  
22 Liability Company,

23 Plaintiff,

24 v.

25 UBER TECHNOLOGIES, INC., a  
26 Delaware Corporation,

27 Defendant.

Case No. 2:13-cv-07154-SJO-JC

**[JOINT PROPOSED] STIPULATED  
PROTECTIVE ORDER**

Hon. S. James Otero

1 1. PURPOSE AND LIMITS OF THIS ORDER

2 Discovery in this action is likely to involve confidential, proprietary, or  
3 private information requiring special protection from public disclosure and from use  
4 for any purpose other than this litigation. Thus, the Court enters this Protective  
5 Order. This Order does not confer blanket protections on all disclosures or  
6 responses to discovery, and the protection it gives from public disclosure and use  
7 extends only to the specific material entitled to confidential treatment under the  
8 applicable legal principles. This Order does not automatically authorize the filing  
9 under seal of material designated under this Order. Instead, the parties must comply  
10 with L.R. 79-5.1 if they seek to file anything under seal. This Order does not govern  
11 the use at trial of material designated under this Order.

12 2. DESIGNATING PROTECTED MATERIAL

13 a. Over-Designation Prohibited. Any party or non-party who designates  
14 information or items for protection under this Order as “CONFIDENTIAL,”  
15 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY  
16 CONFIDENTIAL – SOURCE CODE” (a “designator”) must only designate  
17 specific material that qualifies under the appropriate standards. To the extent  
18 practicable, only those parts of documents, items, or oral or written communications  
19 that require protection shall be designated. Designations with a higher  
20 confidentiality level when a lower level would suffice are prohibited. Mass,  
21 indiscriminate, or routinized designations are prohibited. Unjustified designations  
22 expose the designator to sanctions, including the Court’s striking all confidentiality  
23 designations made by that designator. Designation under this Order is allowed only  
24 if the designation is necessary to protect material that, if disclosed to persons not  
25 authorized to view it, would cause competitive or other recognized harm. Material  
26 may not be designated if it has been made public, or if designation is otherwise  
27 unnecessary to protect a secrecy interest. If a designator learns that information or  
28 items that it designated for protection do not qualify for protection at all or do not

1 qualify for the level of protection initially asserted, that designator must promptly  
2 notify all parties that it is withdrawing the mistaken designation.

3       b.       Manner and Timing of Designations. Designation under this Order  
4 requires the designator to affix the applicable legend (“CONFIDENTIAL,”  
5 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY  
6 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected  
7 material. For testimony given in deposition or other proceeding, the designator shall  
8 specify all protected testimony and the level of protection being asserted. It may  
9 make that designation during the deposition or proceeding, or may invoke, on the  
10 record or by written notice to all parties on or before the next business day, a right to  
11 have up to 21 days from the deposition or proceeding to make its designation.

12           i.       A party or non-party that makes original documents or materials  
13 available for inspection need not designate them for protection until after the  
14 inspecting party has identified which material it would like copied and  
15 produced. During the inspection and before the designation, all material shall  
16 be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY.  
17 After the inspecting party has identified the documents it wants copied and  
18 produced, the producing party must designate the documents, or portions  
19 thereof, that qualify for protection under this Order.

20           ii.       Parties shall give advance notice if they expect a deposition or  
21 other proceeding to include designated material so that the other parties can  
22 ensure that only authorized individuals are present at those proceedings when  
23 such material is disclosed or used. The use of a document as an exhibit at a  
24 deposition shall not in any way affect its designation. Transcripts containing  
25 designated material shall have a legend on the title page noting the presence  
26 of designated material, and the title page shall be followed by a list of all  
27 pages (including line numbers as appropriate) that have been designated, and  
28 the level of protection being asserted. The designator shall inform the court

1 reporter of these requirements. Any transcript that is prepared before the  
2 expiration of the 21-day period for designation shall be treated during that  
3 period as if it had been designated HIGHLY CONFIDENTIAL –  
4 ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of  
5 the 21-day period, the transcript shall be treated only as actually designated.

6 c. Inadvertent Failures to Designate. An inadvertent failure to designate  
7 does not, standing alone, waive protection under this Order. Upon timely assertion  
8 or correction of a designation, all recipients must make reasonable efforts to ensure  
9 that the material is treated according to this Order.

### 10 3. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 All challenges to confidentiality designations shall proceed under L.R. 37-1  
12 through L.R. 37-4.

### 13 4. ACCESS TO DESIGNATED MATERIAL

14 a. Basic Principles. A receiving party may use designated material only  
15 for this litigation. Designated material may be disclosed only to the categories of  
16 persons and under the conditions described in this Order.

17 b. Disclosure of CONFIDENTIAL Material Without Further Approval.  
18 Unless otherwise ordered by the Court or permitted in writing by the designator, a  
19 receiving party may disclose any material designated CONFIDENTIAL only to:

20 i. The receiving party's outside counsel of record in this action and  
21 employees of outside counsel of record to whom disclosure is reasonably  
22 necessary;

23 ii. The officers, directors, and employees of the receiving party to  
24 whom disclosure is reasonably necessary, and who have signed the  
25 Agreement to Be Bound (Exhibit A);

26 iii. Experts retained by the receiving party's outside counsel of  
27 record to whom disclosure is reasonably necessary, and who have signed the  
28 Agreement to Be Bound (Exhibit A);

- 1           iv.     The Court and its personnel;
- 2           v.     Outside court reporters and their staff, professional jury or trial
- 3 consultants, and professional vendors to whom disclosure is reasonably
- 4 necessary, and who have signed the Agreement to Be Bound (Exhibit A);
- 5           vi.    During their depositions, witnesses in the action to whom
- 6 disclosure is reasonably necessary and who have signed the Agreement to Be
- 7 Bound (Exhibit A); and
- 8           vii.   The author or recipient of a document containing the material, or
- 9 a custodian or other person who otherwise possessed or knew the information.
- 10       c.     Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES
- 11 ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without
- 12 Further Approval. Unless permitted in writing by the designator, a receiving party
- 13 may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY
- 14 EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further
- 15 approval only to:
  - 16           i.     The receiving party’s outside counsel of record in this action and
  - 17 employees of outside counsel of record to whom it is reasonably necessary to
  - 18 disclose the information;
  - 19           ii.    The Court and its personnel;
  - 20           iii.   Outside court reporters and their staff, professional jury or trial
  - 21 consultants, and professional vendors to whom disclosure is reasonably
  - 22 necessary, and who have signed the Agreement to Be Bound (Exhibit A); and
  - 23           iv.    The author or recipient of a document containing the material, or
  - 24 a custodian or other person who otherwise possessed or knew the information.
- 25       d.     Procedures for Approving or Objecting to Disclosure of HIGHLY
- 26 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
- 27 SOURCE CODE Material to In-House Counsel or Experts. Unless agreed to in
- 28 writing by the designator:

1           i.       A party seeking to disclose to in-house counsel any material  
2 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must  
3 first make a written request to the designator providing the full name of the  
4 in-house counsel, the city and state of such counsel’s residence, and such  
5 counsel’s current and reasonably foreseeable future primary job duties and  
6 responsibilities in sufficient detail to determine present or potential  
7 involvement in any competitive decision-making. In-house counsel are not  
8 authorized to receive material designated HIGHLY CONFIDENTIAL –  
9 SOURCE CODE.

10           ii.     A party seeking to disclose to an expert retained by outside  
11 counsel of record any information or item that has been designated HIGHLY  
12 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
13 CONFIDENTIAL – SOURCE CODE must first make a written request to the  
14 designator that (1) identifies the general categories of HIGHLY  
15 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
16 CONFIDENTIAL – SOURCE CODE information that the receiving party  
17 seeks permission to disclose to the expert, (2) sets forth the full name of the  
18 expert and the city and state of his or her primary residence, (3) attaches a  
19 copy of the expert’s current resume, (4) identifies the expert’s current  
20 employer(s), (5) identifies each person or entity from whom the expert has  
21 received compensation or funding for work in his or her areas of expertise  
22 (including in connection with litigation) in the past five years, and (6)  
23 identifies (by name and number of the case, filing date, and location of court)  
24 any litigation where the expert has offered expert testimony, including by  
25 declaration, report, or testimony at deposition or trial, in the past five years.  
26 If the expert believes any of this information at (4) - (6) is subject to a  
27 confidentiality obligation to a third party, then the expert should provide  
28 whatever information the expert believes can be disclosed without violating

1 any confidentiality agreements, and the party seeking to disclose the  
2 information to the expert shall be available to meet and confer with the  
3 designator regarding any such confidentiality obligations.

4 iii. A party that makes a request and provides the information  
5 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to  
6 the identified in-house counsel or expert unless, within seven days of  
7 delivering the request, the party receives a written objection from the  
8 designator providing detailed grounds for the objection.

9 iv. All challenges to objections from the designator shall proceed  
10 under L.R. 37-1 through L.R. 37-4.

11 5. SOURCE CODE

12 a. Designation of Source Code. If production of source code is necessary,  
13 a party may designate it as HIGHLY CONFIDENTIAL – SOURCE CODE if it is,  
14 or includes, confidential, proprietary, or trade secret source code.

15 b. Location and Supervision of Inspection. Any HIGHLY  
16 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made  
17 available for inspection, in a format allowing it to be reasonably reviewed and  
18 searched, during normal business hours or at other mutually agreeable times, at an  
19 office of the designating party's counsel or another mutually agreeable location.  
20 The source code shall be made available for inspection on a secured computer in a  
21 secured room, and the inspecting party shall not copy, remove, or otherwise transfer  
22 any portion of the source code onto any recordable media or recordable device. The  
23 designator may visually monitor the activities of the inspecting party's  
24 representatives during any source code review, but only to ensure that there is no  
25 unauthorized recording, copying, or transmission of the source code.

26 c. Paper Copies of Source Code Excerpts. The inspecting party may  
27 request paper copies of limited portions of source code that are reasonably necessary  
28 for the preparation of court filings, pleadings, expert reports, other papers, or for



1 deposition or trial. The designator shall provide all such source code in paper form,  
2 including Bates numbers and the label “HIGHLY CONFIDENTIAL – SOURCE  
3 CODE.”

4 d. Access Record. The inspecting party shall maintain a record of any  
5 individual who has inspected any portion of the source code in electronic or paper  
6 form, and shall maintain all paper copies of any printed portions of the source code  
7 in a secured, locked area. The inspecting party shall not convert any of the  
8 information contained in the paper copies into any electronic format other than for  
9 the preparation of a pleading, exhibit, expert report, discovery document, deposition  
10 transcript, or other Court document. Any paper copies used during a deposition  
11 shall be retrieved at the end of each day and must not be left with a court reporter or  
12 any other unauthorized individual.

#### 13 6. PROSECUTION BAR

14 Absent written consent from the designator, any individual who receives  
15 access to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
16 CONFIDENTIAL – SOURCE CODE information shall not be involved in the  
17 prosecution of patents or patent applications concerning the field of the invention of  
18 the patents-in-suit for the receiving party or its acquirer, successor, predecessor, or  
19 other affiliate during the pendency of this action and for one year after its  
20 conclusion, including any appeals. “Prosecution” means drafting, amending,  
21 advising on the content of, or otherwise affecting the scope or content of patent  
22 claims or specifications. These prohibitions shall not preclude counsel from  
23 participating in reexamination or inter partes review proceedings to challenge or  
24 defend the validity of any patent, but counsel may not participate in the drafting of  
25 amended claims in any such proceedings.



7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
IN OTHER LITIGATION

a. Subpoenas and Court Orders. This Order in no way excuses non-compliance with a lawful subpoena or court order. The purpose of the duties described in this section is to alert the interested parties to the existence of this Order and to give the designator an opportunity to protect its confidentiality interests in the court where the subpoena or order issued.

b. Notification Requirement. If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE, that party must:

i. Promptly notify the designator in writing. Such notification shall include a copy of the subpoena or court order;

ii. Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and

iii. Cooperate with all reasonable procedures sought by the designator whose material may be affected.

c. Wait For Resolution of Protective Order. If the designator timely seeks a protective order, the party served with the subpoena or court order shall not produce any information designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE before a determination by the court where the subpoena or order issued, unless the party has obtained the designator's permission. The designator shall bear the burden and expense of seeking protection of its confidential material in that court.

1 8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
3 designated material to any person or in any circumstance not authorized under this  
4 Order, it must immediately (1) notify in writing the designator of the unauthorized  
5 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the  
6 designated material, (3) inform the person or persons to whom unauthorized  
7 disclosures were made of all the terms of this Order, and (4) use reasonable efforts  
8 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
10 PROTECTED MATERIAL

11 When a producing party gives notice that certain inadvertently produced  
12 material is subject to a claim of privilege or other protection, the obligations of the  
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
14 This provision is not intended to modify whatever procedure may be established in  
15 an e-discovery order that provides for production without prior privilege review  
16 pursuant to Federal Rule of Evidence 502(d) and (e).

17 10. FILING UNDER SEAL

18 Without written permission from the designator or a Court order, a party may  
19 not file in the public record in this action any designated material. A party seeking  
20 to file under seal any designated material must comply with L.R. 79-5.1. Filings  
21 may be made under seal only pursuant to a court order authorizing the sealing of the  
22 specific material at issue. The fact that a document has been designated under this  
23 Order is insufficient to justify filing under seal. Instead, parties must explain the  
24 basis for confidentiality of each document sought to be filed under seal. Because a  
25 party other than the designator will often be seeking to file designated material,  
26 cooperation between the parties in preparing, and in reducing the number and extent  
27 of, requests for under seal filing is essential. If a receiving party's request to file  
28 designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then

1 the receiving party may file the material in the public record unless (1) the  
2 designator seeks reconsideration within four days of the denial, or (2) as otherwise  
3 instructed by the Court.

4 11. FINAL DISPOSITION

5 Within 60 days after the final disposition of this action, each party shall return  
6 all designated material to the designator or destroy such material, including all  
7 copies, abstracts, compilations, summaries, and any other format reproducing or  
8 capturing any designated material. The receiving party must submit a written  
9 certification to the designator by the 60-day deadline that (1) identifies (by category,  
10 where appropriate) all the designated material that was returned or destroyed, and  
11 (2) affirms that the receiving party has not retained any copies, abstracts,  
12 compilations, summaries, or any other format reproducing or capturing any of the  
13 designated material. This provision shall not prevent counsel from retaining an  
14 archival copy of all pleadings, motion papers, trial, deposition, and hearing  
15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
16 reports, attorney work product, and consultant and expert work product, even if such  
17 materials contain designated material. Any such archival copies remain subject to  
18 this Order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: February 10, 2014 OLAVI DUNNE LLP

3  
4  
5 By/s/ *Matt Olavi*

6 Matt Olavi

7 Brian J. Dunne

8 Attorneys for Plaintiff Eclipse IP LLC

9 DATED: February 10, 2014

10 QUINN EMANUEL URQUHART &  
11 SULLIVAN LLP

12  
13 By/s/ *Joseph M. Paunovich*

14 Joseph M. Paunovich

15 Attorneys for Defendant Uber  
16 Technologies, Inc.

17 IT IS SO ORDERED.

18 DATED: February 28, 2014

19 /s/ Jacqueline Chooljian

20 U.S. MAGISTRATE JUDGE  
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**EXHIBIT A**

**AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that  
I have read in its entirety and understand the Protective Order that was issued by the  
United States District Court for the Central District of California on  
\_\_\_\_\_ [date] in the case of *Eclipse IP LLC v. Uber*  
*Technologies, Inc.*, Case No. 2:13-cv-07154-SJO. I agree to comply with and to be  
bound by all the terms of this Protective Order, and I understand and acknowledge  
that failure to so comply could expose me to sanctions and punishment for  
contempt. I solemnly promise that I will not disclose in any manner any information  
or item that is subject to this Protective Order to any person or entity except in strict  
compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Central District of California for the purpose of enforcing this Order, even if  
such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with  
this action or any proceedings related to enforcement of this Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_